HOMOSEXUAL CONDUCT POLICY

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Homosexual Conduct Policy

- The Law
- Definitions
- Application
- Harassment

THE LAW

- Codified in 10 U.S.C. 654 (1994)
  - Conduct based
  - Commander focused
- In layman's terms
  - Homosexual *orientation* alone is not a bar to service
  - Homosexual *conduct* is incompatible with military service
  - "Don't Ask-Don't Tell" is neither a complete nor an accurate description

DEFINITIONS

- "Homosexual Conduct"
  - Homosexual acts
  - Verbal or nonverbal statements that the member is homosexual. Such statements create a rebuttable presumption of homosexual conduct
  - Marriage or attempted marriage to someone of the same sex

DEFINITIONS continued

- "Homosexual Act"
  - Bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires and any bodily contact that a reasonable person would understand to demonstrate a propensity or intent to engage in a homosexual act (i.e., kissing, petting, holding hands, caressing)

DEFINITIONS continued

- "Homosexual Statement"
  - A statement that a member is a homosexual or bisexual, or words to that effect or language or behavior that a reasonable person would believe is intended to convey the statement that a person engages in or has a propensity or intent to engage in homosexual acts (i.e. "I am gay," "I am a homosexual," "I have a homosexual orientation."

DEFINITIONS (continued)

- "Rebuttable Presumption"
  - Statements of homosexuality create a rebuttable presumption that the member engages in homosexual acts or has a propensity or intent to do so
  - The member has the burden of rebutting such a presumption

APPLICATION TO MEMBERS

- Accessions
  - Not asked about sexual orientation
  - Informed of the policy an must acknowlege understanding in writing
  - Homosexual *conduct* may bar entry
- Continued Service: sexual orientation is not a bar to continued service unless manifested by “homosexual conduct”

HARASSMENT

- Reported harassment
  - If a member is threatened or harassed because they have been labeled or are perceived to be homosexual, they have every right to report the threat or harassment to authorities
- Action
  - The mere report of harassment cannot form the basis for an inquiry into the member's sexual orientation
  - Even if information of homosexual conduct arises, the inquiry into the harassment must continue

DoD POLICY ON HARASSMENT

- The Air Force will treat all individuals with dignity and respect, free of threats or harassment.

- If, during the course of an inquiry into harassment, the commander is informed of homosexual conduct, he/she must carefully consider the source of the information and the surrounding circumstances prior to initiating an inquiry into the alleged conduct (*credible* evidence)

SUMMARY

- Sexual orientation is not a bar to service
- Homosexual conduct (acts, statements, or marriage) is incompatible with military service and is a basis for discharge
- All personnel must be treated with dignity and respect, free of threats or harassment.

COMMON PITFALLS

- Failure to brief members on policy

- Toleration of “jokes” – command must set the example

QUESTIONS/COMMENTS / CRITICISM?